

the Act. It provides for the guarantee by the Administrator of full and timely payment of principal and interest on any obligation of the State, municipality, or intermunicipal or interstate agency issued directly and exclusively to the Federal Financing Bank to finance the local share of the costs of any such project.

§ 39.105 Definitions.

The following words and terms shall have the meaning set forth below:

(a) *Act*. The Federal Water Pollution Control Act Amendments of 1972, as amended (Pub. L. 92-500, 33 U.S.C. 1281 *et seq.*).

(b) *Bank*. The Federal Financing Bank established pursuant to the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 *et seq.*).

(c) *Guaranteed Loan Program*. The program established pursuant to Pub. L. 94-558 which amended the Act by adding section 213.

(d) *Loan agreement*. A written agreement between the Bank and the guaranteed borrower stating the terms of the loan.

(e) *Loan guarantee agreement*. A written agreement between EPA and the guaranteed borrower stating the terms of the loan guarantee.

(f) *Local share*. The amount of the total grant eligible and allowable project costs which a public body is obligated to pay under the grant.

(g) *Note*. An evidence of the debt, including a bond, obligation to pay, or other evidence of indebtedness where appropriate.

(h) *Public body*. A State, interstate agency, a municipality, or an intermunicipal agency, as defined below:

(1) *State*. A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(2) *Interstate agency*. An agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

(3) *Municipality*. A city, town, borough, county, parish, district, association, or other public body (including an

intermunicipal agency of two or more of the foregoing entities) created by or pursuant to State law, or an Indian Tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of the Act. This definition excludes a special district, such as a school district, which does not have as one of its principal responsibilities the treatment, transport, or disposal of liquid wastes.

(i) *Reasonable terms*. Rates determined by the Secretary of the Treasury with relationship to the current average yield on outstanding marketable obligations of municipalities of comparable maturity.

§ 39.110 Application.

(a) *Who may apply*. A public body which has applied for a grant under Title II of the Act (including grantees whose projects are eligible for reimbursement under section 206 of that title) or which has committed itself to finance the local share of any project(s) for which a grant has been awarded, or for which an application is being processed, may apply through the State agency to the appropriate Regional Administrator for a loan and the commitment to guarantee such loan to finance the local share of such project.

(b) *Financing*. Applications for loan guarantees will be limited to:

(1) Financing that portion of the local share for which permanent financing has not been arranged.

(2) Refinancing that portion of the local share of those projects on which construction has not been completed and for which the public body initially held a public solicitation on a bond issue, received no bids, and subsequently accepted or negotiated financing at interest rates greater than 10 percent.

(c) *Application requirements*. The application shall include documentation of the following:

(1) *Inability to obtain necessary financing*. The applicant shall document that it is unable to obtain on reasonable terms as defined in § 39.105(i) sufficient credit to finance the local share of the

project(s). Such documentation shall include:

(i) The results of any public solicitation for bids for obligations to finance the local share or (ii) a certification, acceptable to the Administrator, from a municipal bond underwriter(s), which submitted or might normally have submitted a bid for the obligations. An applicant with an obligation to pay the local share not in excess of \$250,000 may obtain certification from two or more local or regional banks to meet paragraph (c)(1)(ii) of this section. An applicant representing communities with a population of 10,000 or less must also submit a written statement from an authorized representative of the Farmers Home Administration that grants, loans, or loan guarantees are not available from Farmers Home Administration in an adequate amount or within a reasonable time, as determined by the Administrator.

(2) *Ability to repay.* The application for a loan guarantee shall be accompanied by an official statement intended to provide EPA with the information needed to reach an informed judgment as to whether there is reasonable assurance of repayment. The official statement must conform to the guidelines for such statement which are available to applicants from the EPA regional office upon request.

(3) *Legal authority of applicant.* The application shall be accompanied by a legal opinion establishing that the applicant has legal authority to obligate itself for payment of the local share, to comply with the loan conditions, and to issue the obligations, and that the obligations will be legal and binding obligations.

(4) *Assurances.* The application shall be accompanied by assurances set forth in an ordinance or other evidence of authority acceptable to the Administrator that it can and will comply with all of the conditions set forth in § 39.115.

(d) *Fees.* The following fees will be charged in order to make the program self-sustaining. These fees may be revised from time to time as determined by the Administrator.

(1) *Application processing.* EPA will charge a non-refundable minimum fee of \$1,000 or $\frac{1}{8}$ of one percent of the loan

amount, whichever is greater, but not to exceed \$25,000 for processing applications. This fee will be submitted with the application and will be retained by the EPA whether or not a loan is consummated.

(2) *Fee for issuance of a commitment to guarantee.* A fee will be charged for the issuance of a commitment to guarantee a loan. This fee will be $\frac{1}{2}$ of 1 percent of the principal amount of the loan, and shall be placed in a contingency reserve to offset defaults. This fee is contingent upon the loan being obtained by the applicant and is payable within 30 days of the date of loan approval.

(e) *Format.* The Administrator may, from time to time, prescribe a form or format for the submission of the application or any portion thereof.

§ 39.115 Conditions of loan guarantee.

Any loan guarantee made pursuant to this part shall be subject to the following conditions:

(a) *Step 1 or Step 2.* Each public body applying for a loan guarantee for the local share of Step 1 or Step 2 costs must assure that:

(1) It will repay the loan using all local resources legally available; and

(2) Any funds due to the public body from the amounts appropriated under section 206 of the Act may be used if such use is necessary for repayment.

(b) *Step 3.* Each public body applying for a loan for the local share of Step 3 costs must assure that:

(1) It will repay the loan using all local resources legally available and, if necessary, (i) all or any portion of the funds retained by it under section 204(b)(3) of the Act, and (ii) any funds due to such grantee from the amounts appropriated under section 206 of the Act;

(2) The facilities are maintained in good repair and operating condition during the period in which the notes or the obligations financed by the Bank are outstanding;

(3) Adequate insurance and bonding are maintained to protect the guarantor;

(4) Financial reports and records necessary to reflect the planned and actual receipt of revenues for repayment are maintained and preserved until 3 years after the notes or the obligations